Supreme Court, U.S.
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No. 92-337

In the Supreme Court of the United States

OCTOBER TERM, 1992

MELODY PERKINS, PETITIONER

v.

GENERAL MOTORS CORP.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the district court was required to vacate a prior order imposing sanctions because the parties settled the underlying case and requested that the district court vacate the sanctions order.

2. Whether the court of appeals violated the Due Process Clause of the Fifth Amendment by deciding petitioners' appeal as well as their petition for a writ of mandamus.

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OPINIONS BELOW

The opinion of the court of appeals, Pet. App. 1c-23c, is reported at 965 F.2d 597. The orders of the district court, Pet. App. 1a-72a, 1b-2b, are unreported.

JURISDICTION

The judgment of the court of appeals was entered on May 22, 1992. The petition for a writ of certiorari was filed on August 20, 1992. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioner Melody Perkins sued General Motors Corporation ("GM") in the United States District Court for the Western District of Missouri. Pet. App. 2c-3c. She alleged that GM violated Title VII of the Civil Rights Act by subjecting her to sexual harassment in the workplace and violated state law by negligently retaining an employee who had sexually harassed her. *Id.* at 3c. The district court granted summary judgment for GM on the negligence claim and proceeded to trial on the Title VII claim, ultimately finding in favor of GM. *Ibid.* Petitioner Perkins appealed both the grant of summary judgment and the decision on the Title VII claim. *Id.* at 4c.

2. GM moved in the district court for sanctions against petitioner Perkins and her attorney, petitioner Caranchini. Pet. App. 3c. The district court granted the motion in part, and ordered sanctions imposed against petitioners under 28 U.S.C. 1927 and Rules 11 and 26(g), Fed. R. Civ. P., for various abuses during trial and discovery. Pet. App. 71a, 4c n.2. The district court sanctioned petitioners for making unsupported allegations against a GM witness for an improper purpose, *id.* at 18a-26a, making factual misrepresentations in connection with a motion for leave to amend the complaint, *id.* at 27a-34a, improperly handling discovery with respect to a particular witness, *id.* at 34a-46a, misrepresenting evidence regarding witnesses testifying as to petitioner Perkins' work environment, *id.* at 54a-61a, and filing a frivolous motion for recusal of the district judge, *id.* at 61a-70a. The court ordered GM to submit a detailed claim for reasonable attorney's fees and expenses caused by petitioners' conduct. *Id.* at 71a-72a.

3. Before the district court had determined the amount of sanctions to award, the court of appeals decided Perkins' appeal on the merits, upholding the district court's Title VII verdict, but reversing the district court's grant of summary judgment on the negligence claim and remanding that claim for trial. See *Perkins* v. *Spivey*, 911 F.2d 22 (8th Cir. 1990), cert. denied, 111 S. Ct. 1309 (1991). The parties then settled the case. Pet. App. 4c. As part of the settlement agreement, GM joined petitioners in moving to dismiss the case and to vacate the sanctions order. *Ibid.* The district court dismissed the underlying case, but refused to vacate the sanctions order. *Id.* at 1b-2b. The district court did not set an amount for the sanctions award.

4. Petitioners appealed the district court's sanctions orders. Pet. App. 2c. Petitioners later moved to stay the appeal pending application for a writ of mandamus; the court of appeals granted the motion. *Id.* at 12c n.4. Petitioners thereafter filed a petition for a writ of mandamus, arguing that the district court was required to vacate its prior order imposing sanctions because the court did not have jurisdiction to impose sanctions. *Id.* at 2c.

On November 14, 1991, the court of appeals entered an order, which contained captions for both the appeal and the mandamus petition. The order began: "This matter is before the Court on a Petition for a Writ of Mandamus, as well as a notice of appeal from the district court's orders of February 26, 1990, and July 5, 1991." App., *infra*, 1a. The order set a briefing and oral argument schedule, providing due dates for "Petitioners/appellant's brief and Appen-

dix." *Id.* at 2a. The order also granted GM's request to be dismissed from the proceedings, directed the clerk to allow the district court judge to participate, and requested that the United States Attorney enter an appearance on behalf of the district judge. *Ibid.*

Apparently believing the November 14 order did not apply to the appeal, petitioners in their brief addressed only the issue of whether the district court had jurisdiction to impose sanctions. Pet. 10. In contrast, the government (representing the district court judge) addressed the merits of the district court's imposition of sanctions, as well as the jurisdictional issue, in its brief before the court of appeals. See App., *infra*, 4a-6a.

5. The court of appeals denied the petition for a writ of mandamus and affirmed the district court's order imposing sanctions. Pet. App. 23c. Relying on this Court's recent decision in *Willy* v. *Coastal Corp.*, 112 S. Ct. 1076 (1992), the court held that a district court has jurisdiction to impose sanctions even though it does not have jurisdiction over the underlying claim; thus, the district court was not required to vacate its prior order imposing sanctions. Pet. App. 6c-8c. The court of appeals also rejected petitioners' argument that GM's decision not to seek sanctions required the district court to vacate its order, stating that "[t]he interest in having rules of procedure obeyed does not disappear merely because an adversary chooses not to collect the sanctions." *Id.* at 8c. The court held that "[a]ppellants are entitled to bargain with adversaries to drop a motion for sanctions, but they cannot unilaterally bargain away the court's discretion in imposing sanctions and the pub-

lic's interest in ensuring compliance with the rules of procedure." *Id.* at 11c-12c.

Having denied the petition for a writ of mandamus, the court of appeals turned to the appeal of the orders imposing sanctions. The court first rejected petitioners' argument that the appeal was not before the court: "This court, however, on November 14, 1991, entered an order setting a briefing schedule and oral argument in both case Nos. 91-2825 (the appeal) and 91-3550 (the mandamus petition)." Pet. App. 12c n.4. The court of appeals then held that the district court did not abuse its discretion in imposing sanctions against petitioners. See *id.* at 12c-23c.[1]

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or any other court of appeals. Further review is therefore unwarranted.

1. Petitioners argue that a district court may not impose sanctions on its own motion when it does not have jurisdiction over the underlying case. Pet. 27-28. This argument is a combination of two distinct theories. The first is that a district court loses jurisdiction to impose sanctions when the underlying case settles; the second is that a district court lacks jurisdiction to impose sanctions unless a party to the underlying case seeks sanctions. Because neither of these theories is correct, petitioners' argument is unavailing.

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[1] The court also rejected our argument that the district court's order was not a final appealable order because the court had not determined the amount of sanctions to award. Pet. App. 8c-9c.

a. A district court has jurisdiction to impose sanctions for violation of rules regulating the conduct of the courts even when the court loses, or never had, jurisdiction of the underlying case.

In *Cooter & Gell* v. *Hartmarx Corp.*, 496 U.S. 384 (1990), this Court held that a district court has jurisdiction to impose sanctions under Rule 11, Fed. R. Civ. P., after the plaintiff voluntarily dismisses the complaint. The Court reasoned: "[T]he imposition of a Rule 11 sanction is not a judgment on the merits of an action. Rather, it requires the determination of a collateral issue: whether the attorney has abused the judicial process, and, if so, what sanction would be appropriate. Such a determination may be made after the principal suit has been terminated." 496 U.S. at 396. Because the Rule 11 issue is collateral, and "[i]t is well established that a federal court may consider collateral issues after an action is no longer pending," *id.* at 395, the Court concluded that "a voluntary dismissal does not deprive a district court of jurisdiction over a Rule 11 motion." *Id.* at 409.

In *Willy* v. *Coastal Corp.*, 112 S. Ct. 1076 (1992), this Court held that the district court had power to impose sanctions under Rule 11 although the court of appeals later determined that the district court never had jurisdiction over the underlying case. Relying on *Cooter & Gell*, the Court reasoned that, because an order imposing sanctions presents a "collateral issue," issuance of such an order "does not raise the issue of a district court adjudicating the merits of a 'case or controversy' over which it lacks jurisdiction." 112 S. Ct. at 1080. "The interest in having rules of procedure obeyed," the Court noted, "does not disappear upon a subsequent determination that the court was without subject-matter jurisdiction." *Id.* at 1081.

Cooter & Gell and *Willy* establish that settlement of the underlying case does not deprive a district court of jurisdiction to impose sanctions. Moreover, as the court of appeals in this case correctly observed: "Maintaining jurisdiction over the sanctions is even more appropriate in this case [than in *Willy*]. It is undisputed that the district court had subject-matter jurisdiction over the case when the sanctions were ordered. Jurisdiction over the underlying claim was lost later." Pet. App. 7c.

b. Because a court's jurisdiction over the underlying case does not affect the court's jurisdiction over the sanctions issue (as petitioners apparently recognize, see Pet. 26-27), petitioners are left to contend that a district court does not have jurisdiction to impose sanctions when the opposing party in the underlying case does not seek sanctions. Pet. 27-28. This argument is flawed in several respects.

First, Rule 11 itself states: "If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion *or upon its own initiative*, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction." Fed. R. Civ. P. 11 (emphasis added). The rule "made explicit" the authority of courts to impose sanctions on their own motion "in order to overcome the traditional reluctance of courts to intervene unless requested by one of the parties." Fed. R. Civ. P. 11 advisory comm. note. The Rule and Advisory Committee note clearly indicate that district courts have authority to impose sanctions without the motion of a party.

Second, *Willy* and *Cooter & Gell* do not support the distinction drawn by petitioners. In neither case did the Court state, or even hint, that a district

court's jurisdiction over the sanctions issue depends upon the involvement of the opposing party from the underlying case. The Court in *Willy* simply stated that a Rule 11 order "implicates no constitutional concern" and "does not raise the issue of a district court adjudicating the merits of a 'case or controversy' over which it lacks jurisdiction." 112 S. Ct. at 1080.

Third, petitioners' argument reflects a misunderstanding of the nature of sanctions. As this Court stated in *Willy* and *Cooter & Gell*, conduct meriting sanctions is an abuse of the judicial system. See *Willy*, 112 S. Ct. at 1080; *Cooter & Gell*, 496 U.S. at 396. Thus, disputes over whether the rules have been violated and, if so, what sanction to impose are between the court and the party who violated the rules. In this regard, the sanctions determination is similar to a criminal contempt adjudication, see *Gompers* v. *Bucks Stove & Range Co.*, 221 U.S. 418, 445 (1911) ("proceedings at law for criminal contempt are between the public and the defendant, and are not a part of the original cause"), in which a court may "make an adjudication of contempt and impose a contempt sanction even after the action in which the contempt arose has been terminated." *Cooter & Gell*, 496 U.S. at 396; see also *United States* v. *United Mine Workers*, 330 U.S. 258, 294 (1947) ("Violations of an order are punishable as criminal contempt even though * * * the basic action has become moot.").[2]

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[2] Contrary to petitioners' assertion, Pet. 28, the district court in this case specifically noted that petitioners' conduct constituted an abuse of the judicial system. The court's order imposing sanctions stated that "plaintiff's counsel engaged in abusive litigation tactics that delayed the processing of the case and increased the expense for both parties *and the*

2. Petitioners complain, Pet. 30-37, that the court of appeals violated the Due Process Clause when the court, after staying petitioners' appeal pending a decision on the petition for a writ of mandamus, subsequently issued an order setting a consolidated briefing and argument schedule for the appeal and petition and then decided the appeal and the petition together. This claim does not warrant review.

a. Petitioners' failure to brief the merits of the district court's imposition of sanctions is the result of their own neglect. The court of appeals issued a briefing and oral argument order with captions for both the appeal and the mandamus petition. See App., *infra*, 1a. The first sentence of the order stated: "This matter is before the Court on a Petition for a Writ of Mandamus, *as well as a notice of appeal from the district court's orders of February 26, 1990, and July 5, 1991.*" *Ibid.* (emphasis added). The briefing schedule set dates for "Petitioners/appellant's brief and Appendix" and "Petitioners/appellant's Reply Brief." *Id.* at 2a.

Petitioners ignored the plain import of the court of appeals' order. Instead, they simply assumed that the "short briefing schedule and quick time period" meant that only the mandamus issue was involved. Pet. 31. By contrast, contrary to petitioners' assertion, Pet. 10, respondent did address the appeal of the district court's sanctions order: Our brief for the respondent judge included a section arguing that the district

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judicial system." Pet. App. 17a (emphasis added). The district court recounted numerous instances in which petitioners' conduct unreasonably multiplied the proceedings. *Id.* at 16a-17a, 26a, 33a, 45a, 60a.

court did not abuse its discretion in entering its orders. App., *infra*, 4a-6a.

In sum, petitioners cannot legitimately complain that the court deprived them of an opportunity to address the merits of the sanctions orders.

b. In any event, a court of appeals does not violate the Due Process Clause by granting summary affirmance without full briefing and argument. Appellate courts long have been free to give a matter full consideration after determining that formal briefing and oral argument are not necessary. See, *e.g.*, *Taxpayers Watchdog, Inc.* v. *Stanley*, 819 F.2d 294, 297-298 (D.C. Cir. 1987); *Sills* v. *Bureau of Prisons*, 761 F.2d 792, 793-794 (D.C. Cir. 1985).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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NOVEMBER 1992

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 91-2825WM

MELODY PERKINS, PLAINTIFF-APPELLANT

vs.

GENERAL MOTORS CORPORATION, DEFENDANT-APPELLEE

Appeal from the United States District Court
for the Western District of Missouri

No. 91-3550WMKC

IN RE:
MELODY PERKINS and GWEN G. CARANCHINI,
PETITIONERS

Petition for Writ of Mandamus

This matter is before the Court on a Petition for a Writ of Mandamus, as well as a notice of appeal from the district court's orders of February 26, 1990, and July 5, 1991. The Court has completed its initial review of the matter and has determined that disposition of the case would be aided by further briefing and oral argument. The clerk of the Court is directed to set this matter for oral argument during the

Court's January, 1992, session in St. Louis, Missouri. Counsel will be notified of the exact time and date of the oral argument after the January calendar has been established.

It is further ordered that General Motors Corporation is dismissed from these appellate proceedings. The district court judge, however, is an interested party, as the matters raised by appellant and her counsel affect the integrity of the court. As a result, the clerk should set a briefing schedule which allows the district court judge to file a response. The district judge shall request the United States Attorney to represent the Court with respect to the integrity of its orders.

The following briefing schedule is hereby established:

Petitioners/appellant's brief and Appendix	December 2, 1991
Respondent's brief and Appendix	December 20, 1991
Petitioners/appellant's Reply Brief	December 31, 1991

In light of the January, 1992, sitting, no extensions can be granted.

Miscellaneous case number 91-8149 has been regularly docketed as case number 91-3550.

November 14, 1991

Order Entered at the Direction of the Court:

/s/ Michael E. Gans
Clerk, U.S. Court of Appeals,
Eighth Circuit

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 91-2825WM

MELODY PERKINS, ET AL., PLAINTIFFS-APPELLANTS

vs.

GENERAL MOTORS CORPORATION, DEFENDANT-APPELLEE

Appeal from the United States District Court
for the Western District of Missouri

No. 91-3550WMKC

IN RE:
MELODY PERKINS and GWEN G. CARANCHINI,
PETITIONERS

Petition for Writ of Mandamus

ANSWER AND BRIEF OF RESPONDENT

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* * * * *

F. *The District Court Did Not Abuse Its Discretion.*

Should this Court find jurisdiction for the direct appeal or determine that the request for mandamus is properly before it, both the appeal and the petition should be denied on the merits. In order to grant mandamus, this Court must find a clear abuse of discretion or usurpation of judicial power. *Kerr, supra*; *Iowa Beef Processors, supra.* With respect to the appeal, orders concerning sanctions are reviewable under a single "abuse of discretion" standard. *Cooter, supra.*

1. *The Violations Order of February 26.*

When the district court entered the violations order, the court resolved issues properly presented to it by GMC. Perkins and Caranchini do not claim that they were denied procedural due process. They had notice and were heard, even to the extent of an oral argument, which is not necessarily required for due process under Rule 11. *GJB Assoc., Inc. v. Singleton,* 913 F.2d 824 (10th Cir. 1990); *Hudson v. Moore Business Forms, Inc.*, 898 F.2d 686 (9th Cir. 1990).

Since the sanctions issues were justiciable, and since procedural due process was provided, the only question for appellate review is whether the district court abused its discretion in partly granting and partly denying GMC's original motion. The February 26 order, and the whole record, demonstrate that respondent carefully considered the conduct complained of, the circumstances surrounding it, and the arguments of Perkins and Caranchini against the imposition of sanctions.

Perkins and Caranchini do not claim that respondent applied the wrong factual standard, which is objective reasonableness measured at the time the alleged offending action was taken by the party or attorney. *Cooter & Gell, supra; Mann & GG Mfg., Inc.*, 900 F.2d 953 (6th Cir. 1990). There is no factual basis in this record even suggesting that respondent was motivated by vindictiveness or prejudice, as Caranchini claims. There is simply no evidence from which a reasonable person could find that the district court acted in excess of or in abuse of its discretion when it entered the February 26 violations order. Consequently, this Court should affirm the violations order.

2. *The July 5 Denial Order*

In order to grant mandamus with respect to the denial order, this Court would have to find that respondent abused its discretion in refusing to vacate the February 26 order at the request of the parties. Again, the record does not provide any basis for concluding that the district court abused its discretion. The district court explained that it found no error in the February 26 order as it was entered. Respondent further found that the parties had not suggested any extraordinary reason which would justify vacating the earlier order.

The transcript of the July 5 chambers conference shows that the parties were given an opportunity to present such extraordinary cause, and they did not do so. Respondent's concern about allowing parties to "clean up" the record after a case is settled is reflected in the transcript of the July 5 conference. The record reflects no abuse of discretion in the court's order of

July 5. No relief is warranted with respect to the entry of that order.

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